

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

KELLY GENE SVIR,

Petitioner,

vs.

PAT MCTIGHE,

Respondent.

CV-19-85-GF-BMM-JTJ

ORDER

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on February 12, 2020. (Doc. 6). Svir filed a timely objection, (Doc. 7), and is therefore entitled to de novo review of the specified findings and recommendations to which he objects. 28 U.S.C. § 636(b)(1). Those portions of the findings and recommendations to which no party objected will be reviewed for clear error. 28 U.S.C. § 636(b)(1)(A); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction

that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

The Magistrate Judge concluded that Svir’s petition should be dismissed without prejudice because he has failed to exhaust his claims. For the reasons articulated below, the Court agrees with this conclusion.

Svir was sentenced to three years at the Montana Department of Corrections after pleading guilty to felony Driving Under the Influence. (Doc. 4 at 2). Svir did not appeal his conviction in state courts, although he did apply for relief to the Sentence Review Division. (Doc. 4 at 2-3).

Svir, a state prisoner, must exhaust his state court remedies before petitioning for a writ of habeas corpus in federal court. *See* 28 U.S.C. § 2254(b)(1)(A). Svir has failed to seek review of his conviction in state court and therefore the federal courts lack jurisdiction over his habeas petition. Svir may refile his federal habeas petition once he has exhausted his claims in state court.

IT IS ORDERED that

1. The Findings and Recommendations (Doc. 6) are **ADOPTED IN FULL**.
2. Svir’s Amended Petition (Doc. 4) is **DISMISSED** without prejudice as unexhausted.
3. The Clerk is directed to enter judgment accordingly.
4. A certificate of appealability is **DENIED**.

DATED this 5th day of March, 2020.

A handwritten signature in blue ink that reads "Brian Morris".

Brian Morris
United States District Court Judge